

ENTERED

September 18, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

| | | |
|--------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA | § | |
| | § | |
| VS. | § | CRIMINAL ACTION NO. 7:16-CR-546 |
| | § | |
| RODRIGO BORGES DAMASO | § | |

ORDER OF SEVERENCE

Rodrigo Borges Damaso ("Movant") was convicted of violating 21 U.S.C. § 952(a), 960(a)(1), 960(b)(1) and 18 U.S.C. § 2 and was sentenced to 168 months imprisonment with judgment entered on February 2, 2018.¹ Movant appealed the judgement of this court but the appeal was dismissed as frivolous.² No Further review was sought; thus, the judgment is now final. On September 19, 2019, Movant filed a motion invoking Rule 41(g) of the Federal Rules of Criminal Procedure to seek the return of certain property.³

Rule 41(g), Fed.R.Crim.P., permits a person aggrieved by an unlawful search and seizure, or aggrieved by the deprivation of property to file a motion for return of property. A Rule 41(g) motion filed in a criminal case that has already concluded is properly construed as a civil action for return of property.⁴ Such a proceeding is a suit against the United States for property or money, and is civil in nature, invoking the Court's general equity jurisdiction under 28 U.S.C. § 1331.⁵

Because his motion is properly construed as a civil action, Movant must comply with the Prison Litigation Reform Act (PLRA) and pay the \$505 filing fee or submit an application for leave to proceed in forma pauperis. Furthermore, his complaint is subject to the screening requirements of 28 U.S.C. § 1915A.⁶ Movant has not complied with the requirements of the PLRA.

Accordingly, the Court hereby orders that:

(1) The Clerk shall sever Movant's motion,⁷ and transfer the motion and this order to a civil case file, assigning a civil cause number to the proceedings.⁸ The parties shall be realigned, because Rodrigo Borges Damaso is the true plaintiff in this suit against defendant United States of

¹ Dkt. No. 32

² Dkt. No. 48.

³ Dkt. No. 62.

⁴ *United States v. Clymore*, 217 F.3d 370, 373 n.6 (5th Cir. 2000) (citing *Pena v. United States*, 122 F.3d 3, 4 n.3 (5th Cir.1997)).

⁵ *Id.*

⁶ *Pena*, 122 F.3d at 4.

⁷ Dkt. No. 62.

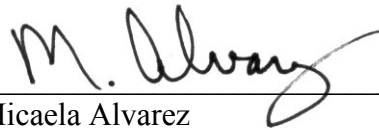
⁸ Such action is to be randomly assigned as a new civil action.

America. All future pleadings related to Movant's motion for return of properly shall be filed in the civil case file.

(2) Within thirty days of the entry of this order, Movant shall either: (a) pay the \$505 filing fee; or (b) submit a completed application to proceed in forma pauperis, along with a certified copy of his inmate trust account records, which must reflect the account balance as of September 16, 2019, as well as the deposits and average balance for the six months preceding that date.⁹ Failure to timely comply may result in dismissal of his cause for want of prosecution.¹⁰

IT IS SO ORDERED.

DONE at McAllen, Texas, this 17th day of September, 2019.

A handwritten signature in black ink, appearing to read "M. Alvarez", is written over a horizontal line.

Micaela Alvarez
United States District Judge

⁹ See 28 U.S.C. § 1915.

¹⁰ Fed.R.Civ.P. 41.